

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS & INTERFERENCES**

In re Patent Application of:)	Confirmation No. 4901
Bret Alan GORSLINE , <i>et al.</i>)	Group Art Unit: 2178
Application No. 10/727,264)	Examiner: David Faber
Filed: December 3, 2003)	
For: METHODS AND SYSTEMS FOR)	Date: August 20, 2010
PROGRAMMABLY GENERATING)	
ELECTRONIC AGGREGATE)	
CREATIVES FOR DISPLAY ON AN)	
ELECTRONIC NETWORK)	

REPLY BRIEF

Mail Stop Appeal Brief – Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The following Reply Brief is submitted in support of the appeal proceedings instituted by the Notice of Appeal filed January 14, 2010, to appeal the Examiner's final rejections in the Final Office Action of October 14, 2009.

As stated in the Appeal Brief, this Appeal is taken from the rejection of claims 46-96, as submitted in the Appendix herewith.

I. RESPONSE TO EXAMINER'S "Response to Argument"

On page 19, line 7-page 20, line 3 of the Examiner's Answer, the Examiner states:

Furthermore, the claim language of claim limitations "storing the plurality of aggregate creative forms...transmission" does not explicitly state how or where the aggregate creative forms are stored, other than being stored after being "assembled". In addition, the claim language does not explicitly state how many assembled forms are stored before one is selected and transmitted since the claim language is written in a general approach and does not explicitly state the conditions of when the creative is selected. (i.e. when the aggregate creative is selected for transmission") Thus, the claim language still has the ability for an aggregate creative to be selected after it has been made since it [sic] the written claim language of the claim limitations does not eliminate that embodiment. Therefore, Paragraph 0048, Step 314 and Claims 1, 16, 39 disclose the creation/generation of a proposed advertisement that is used to be displayed to the user for authorization. The generation of proposed advertisement is defined as the plurality of product references that has been laid out on the plurality of advertisement areas. Thus, when displaying the proposed advertisement to the user, an "assembled form" is presented. In addition, it is inherently known when any data (i.e. advertisement) is created, its [sic] stored in a form of memory such as a memory buffer or in a volatile memory for further operation (i.e.) displayed. Furthermore, after authorization/approval, the proposed (assembled) advertisement may be transmitted to users via a printer, email or posted on a web site by Internet. (Paragraphs 0052, 0095, Claim 17)

Applicants respectfully submit that the Examiner's application of U.S. Patent Application Publication No. 2002/0036654 to Evans *et al.* (hereinafter, "Evans") fails to consider the exact language of the claims. *See M.P.E.P.* § 2143.03 (explaining, "All words in a claim must be considered in judging the patentability of that claim against the prior art.").

Independent claims 46, 63, and 80 require "storing the plurality of aggregate creative forms." According to the claims, the plurality of aggregate creative forms results from a prior assembling step, *i.e.*, "assembling, in accordance with the aggregate creative definition, a plurality of aggregate creative forms, comprising the steps of: . . ."

In addition, claims 46, 63, and 80 require that "the plurality of aggregate creative forms [are] associated with the aggregate creative in the advertising system as assembled forms." Thus, the aggregate creative forms must be distinguished from the aggregate creative. As described in the present Specification, an aggregate creative is "one type of electronic

advertisement” while an aggregate creative form is “a single snapshot of an aggregate creative which has a particular set and order of displayed subcreatives.” (filed Specification, page 8, lines 9-10, 20-21.) The claims require a plurality of aggregate creative forms for a single aggregate creative, *i.e.*, N snapshots for *one* type of advertisement.

Furthermore, claims 43, 63, and 80 require “selecting one of the previously assembled plurality of stored aggregate creative forms associated with the aggregate creative” and “retrieving the selected aggregate creative form for the transmission” “when the aggregate creative is selected for transmission to users on an electronic network by the advertising system.” The claims require that one of the assembled and stored plurality of aggregate creative forms is selected and retrieved when the single associated aggregate creative is selected by the advertising system, *i.e.*, one of the N snapshots is selected and retrieved when an advertising system selects the *one* type of advertisement.

The Examiner asserts that displaying a proposed advertisement to a user and transmitting the proposed advertisement after authorization/approval as taught by Evans corresponds to the claimed steps above. (*See* Examiner’s Answer, page 19, line 16-page 20, line 3.) However, Evans fails to teach or suggest that the transmitted advertisement is selected from one of a ***plurality*** of assembled advertisements, as required by the claims. Rather, Evans teaches that only a single advertisement is made available to the user for approval and transmission. According to paragraph [0048] of Evans cited by the Examiner: “In step 314, a preview of the advertisement may be created for the user. In step 316, the user may review the preview, and, if satisfactory, may authorize the production of the advertisement. In step 318, the advertisement may be produced, in an electronic format, in a printed format, etc.” This section of Evans does not even consider a plurality of advertisements. Indeed, the Examiner describes the proposed advertisement as “an ‘assembled form’” *in the singular*. (Examiner’s Answer, page 19, lines 20-21.) Because Evans fails to teach a plurality of assembled advertisements, Evans fails to contemplate a plurality of assembled advertisements in association with one type of advertisement, *i.e.*, aggregate creative, as further required by the claims. Moreover, Evans fails to consider the selection and retrieval of one of the plurality of assembled advertisements when the one type of advertisement is selected by an advertising system. Indeed, Evans does not even teach or suggest that the selection of a type of advertisement triggers the additional selection of

one of a plurality of advertisements associated with that type. Accordingly, the Examiner's application of Evans belies an accurate reading of the reference as well as the language of claims 43, 63, and 80.

On page 22, lines 3-15 of the Examiner's Answer, the Examiner states:

Furthermore, when the webpage is view [sic], the web page displaying the ads is a form an [sic] created, assembled advertisement since [sic] includes the combination of ads. Therefore, despite the Adcycle transmitting the ads and a web page to a client, the combination is assembled at the client for viewing. (Page 1, #7: Discloses putting code onto the webpage HTML, and viewing the page in the browser. It is implicitly known when a web page is viewed in a browser; the HTML page and the content associated with the HTML page to be displayed on the webpage are obtained from one or more servers and are combined/assembled together as a web page) In addition, when the assembled web page with the ads is viewed in the browser, the web page with the ads is stored on the client (stored in a form of memory such as a memory buffer or in a volatile memory for further operations) Furthermore, it is implicitly known a file stored in one location can [sic] moved (transmitted) to another location (i.e. another computer).

Applicants respectfully submit that the Examiner's application of the article entitled "Adcycle Support: Getting Started" (hereinafter, "AdCycle") also fails to consider the exact language of the claims. See *M.P.E.P.* § 2143.03. As described previously, independent claims 43, 63, and 80 require "storing the plurality of aggregate creative forms." In addition, the claims required "selecting one of the previously assembled plurality of stored aggregate creative forms associated with the aggregate creative" and "retrieving the selected aggregate creative form for the transmission" "when the aggregate creative is selected for transmission to users on an electronic network by the advertising system."

However, rather than initially storing a plurality of web pages with different combinations of campaigns, AdCycle indicates that web pages with different combinations of campaigns are generated at the time that they are called by a browser. In particular, steps 1-7 in AdCycle relate to "defining w[h]ere you want the ads to rotate" (AdCycle, lines 10-11) and the resulting rotation only appears when a user "view[s] the page with a browser, and reload[s] it a few times to see your banners appearing" (*id.*, lines 28-29). Because a web page is generated at the same time that it is transmitted to a browser, there is no need to store the generated web page for subsequent selection and transmission, as required by the claims. Indeed, the purpose of

AdCycle is to provide different web pages each time, so there is no need to store web pages that have already been transmitted to the browser. Even if a web page must inherently be stored temporarily to transmit it to a browser, storage of only a single web page would be required.

The Examiner asserts that “the web page displaying the ads is a form” and “when the assembled web page with the ads is viewed in the browser, the web page with the ads is stored on the client (stored in a form of memory such as a memory buffer or in a volatile memory for further operations).” (Examiner’s Answer, page 22, lines 3-5, 11-14.) In general, AdCycle is completely silent on what happens to the web pages after they have been served and viewed. However, even assuming *arguendo* that the web page is the claimed aggregate creative form and is stored on the client after viewing, the Examiner has failed to establish that a plurality of these web pages are stored and available for selection and retrieval for further transmission as recited by the claims. In particular, AdCycle does not even contemplate that a plurality of these viewed web pages stored on the client correspond to a type of advertisement, *i.e.*, an aggregate creative, that is selectable by an advertising system. Thus, AdCycle fails to teach that one of a plurality of web pages stored on the client is selected and retrieved for transmission by the advertising system when the advertising system selects the type. Accordingly, like its application of Evans, the Examiner’s application of AdCycle belies an accurate reading of the reference as well as the language of claims 43, 63, and 80.

In summary, Evans and AdCycle fail to teach or suggest storing the assembled plurality of aggregate creative forms, and selecting and retrieving one of the previously assembled plurality of stored aggregate creative forms when the aggregate creative is selected for transmission to users on an electronic network by an advertising system, as required by independent claims 46, 63, and 80. Because Evans and AdCycle fail to teach or suggest each and every element recited by independent claims 46, 63, and 80, the rejection of the claims under 35 U.S.C. § 103(a) be should be **REVERSED**.

II. CONCLUSION

In view of the above arguments, and in view of the arguments previously presented in the Appeal Brief, Appellants submit that pending claims 46-96 define patentable subject matter under § 103, and that the applied references, either taken alone or in combination, fail to teach or

suggest the invention recited in claims 46-96. Accordingly, Appellants respectfully request that this Honorable Board reverse the rejections of claims 46-96.

Respectfully submitted,
NIXON PEABODY, LLP

Date: August 20, 2010

/Joey C. Yao, Reg. No. 63,810/
Joey C. Yao
Reg. No. 63,810

NIXON PEABODY LLP
401 9th Street, N.W., Suite 900
Washington, DC 20004
(202) 585-5000
(202) 585-8080 (Fax)

III. CLAIMS APPENDIX

1-45. (Cancelled)

46. (Previously Amended) A method for the automated generation and serving of aggregate creatives, comprising the steps of:

receiving an aggregate creative definition, the aggregate creative definition being associated with an aggregate creative that is selectable by an advertising system;

selecting, in accordance with the aggregate creative definition, at least one set of more than one subcreative from a plurality of subcreatives in the advertising system;

assembling, in accordance with the aggregate creative definition, a plurality of aggregate creative forms, comprising the steps of:

rotating through the at least one set of more than one subcreative; and

selecting, during the step of rotating, a plurality of subsets of subcreatives to be included in the plurality of aggregate creative forms, the plurality of subsets of subcreatives including different combinations of more than one subcreative; and
storing the plurality of aggregate creative forms, the plurality of aggregate creative forms associated with the aggregate creative in the advertising system as assembled forms; and

when the aggregate creative is selected for transmission to users on an electronic network by the advertising system, selecting one of the previously assembled plurality of stored aggregate creative forms associated with the aggregate creative, and retrieving the selected aggregate creative form for the transmission.

47. (Previously Presented) The method according to claim 46, further comprising applying weighting criteria to the selected set of subcreatives, wherein the step of selecting a plurality of subsets of subcreatives comprises the step of selecting a plurality of subsets of subcreatives according to the weighting criteria.

48. (Previously Presented) The method according to claim 47, wherein the step of applying weighting criteria comprises the step of generating copies of weighted subcreatives in the at least one set of subcreatives in accordance with the weighting criteria.

49. (Previously Presented) The method according to claim 46, wherein the aggregate creative appears to rotate subcreatives when the step of selecting one of the aggregate creative forms and the step of retrieving the selected aggregate creative form for the transmission are repeated.
50. (Previously Presented) The method according to claim 46, wherein the at least one set of subcreatives includes a plurality of sets of subcreatives and the plurality of subsets of subcreatives are selected from each set of subcreatives.
51. (Previously Presented) The method according to claim 50, wherein the plurality of aggregate creative forms includes subsets of subcreatives from more than one of the plurality of sets of subcreatives.
52. (Previously Presented) The method according to claim 50, wherein the aggregate creative appears to rotate subcreatives from more than one of the plurality of sets of subcreatives when the step of selecting one of the aggregate creative forms and the step of retrieving the selected aggregate creative form are repeated.
53. (Previously Presented) The method according to claim 50, wherein the plurality of sets of subcreatives includes graphic subcreatives, text subcreatives, and hyperlink subcreatives.
54. (Previously Presented) The method according to claim 50, wherein the plurality of sets of subcreatives includes different numbers of subcreatives.
55. (Previously Presented) The method according to claim 50, wherein at least two of the sets of subcreatives share one or more common subcreatives.
56. (Previously Presented) The method according to claim 46, wherein the aggregate creative definition includes one or more constraints for the step of selecting at least one set of subcreatives, the one or more constraints determining permitted combinations of subcreatives for the plurality of subsets of subcreatives.

57. (Previously Presented) The method according to claim 46, wherein the step of assembling a plurality of aggregate creative forms occurs off-line from when the aggregate creative is selected for transmission.
58. (Previously Presented) The method according to claim 46, further comprising the step of tracking transmitted subcreatives transmitted to users on the electronic network.
59. (Previously Presented) The method according to claim 46, wherein at least one of the steps of selecting at least one set of subcreatives, selecting a plurality of subsets of subcreatives, and assembling a plurality of aggregate creative forms is further executed according to scheduling criteria for transmission to users.
60. (Previously Presented) The method according to claim 46, wherein at least one of the steps of selecting at least one set of subcreatives, selecting a plurality of subsets of subcreatives, and assembling a plurality of aggregate creative forms is further executed according to criteria for targeting transmission to specific users.
61. (Previously Presented) The method according to claim 46, wherein the aggregate creative definition enables the step of assembling a plurality of aggregate creative forms to occur even if a prescribed number of subcreatives is not available in one of the subsets of subcreatives.
62. (Previously Presented) The method according to claim 46, wherein the advertising system is configured to select aggregate creatives and non-aggregate creatives for transmission to users on the electronic network.
63. (Previously Presented) A system for the automated generation and serving of aggregate creatives, comprising:
- means for the receiving an aggregate creative definition, using a computer processor, the aggregate creative definition being associated with an aggregate creative that is selectable by an advertising computer system;

means for selecting, in accordance with the aggregate creative definition, using a computer processor, at least one set of more than one subcreative from a plurality of subcreatives in the advertising computer system;

means for assembling, in accordance with the aggregate creative definition, using a computer processor, a plurality of aggregate creative forms, the means for assembling comprising:

means for rotating through the at least one set of more than one subcreative; and

means for selecting, during the step of rotating, a plurality of subsets of subcreatives to be included in the plurality of aggregate creative forms, the plurality of subsets of subcreatives including different combinations of more than one subcreative; and

means for storing the plurality of aggregate creative forms, the plurality of aggregate creative forms associated with the aggregate creative in the advertising computer system;

means for selecting, using a computer processor, one of the plurality of stored aggregate creative forms associated with the aggregate creative, when the aggregate creative is selected for transmission to users on an electronic network by the advertising computer system as assembled forms; and

means for retrieving, using a computer processor, the previously assembled selected aggregate creative form for transmission to users on an electronic network, when the aggregate creative is selected for the transmission to users on the electronic network by the advertising computer system.

64. (Previously Presented) The system according to claim 63, further comprising means for applying weighting criteria to the selected set of subcreatives, wherein the means for selecting a plurality of subsets of subcreatives comprises means for selecting a plurality of subsets of subcreatives according to the weighting criteria.

65. (Previously Presented) The system according to claim 64, wherein the means for applying weighting criteria comprises means for generating copies of weighted subcreatives in the at least one set of subcreatives in accordance with the weighting criteria.

66. (Previously Presented) The system according to claim 63, wherein the aggregate creative appears to rotate subcreatives when the aggregate creative forms are transmitted.

67. (Previously Presented) The system according to claim 63, wherein the at least one set of subcreatives includes a plurality of sets of subcreatives and the plurality of subsets of subcreatives are selected from each set of subcreatives.

68. (Previously Presented) The system according to claim 67, wherein the plurality of aggregate creative forms includes subsets of subcreatives from more than one of the plurality of sets of subcreatives.

69. (Previously Presented) The system according to claim 67, wherein the aggregate creative appears to rotate subcreatives from more than one of the plurality of sets of subcreatives when the aggregate creative forms are transmitted.

70. (Previously Presented) The system according to claim 67, wherein the plurality of sets of subcreatives includes graphic subcreatives, text subcreatives, and hyperlink subcreatives.

71. (Previously Presented) The system according to claim 67, wherein the plurality of sets of subcreatives includes different numbers of subcreatives.

72. (Previously Presented) The system according to claim 67, wherein at least two of the sets of subcreatives share one or more common subcreatives.

73. (Previously Presented) The system according to claim 63, wherein the aggregate creative definition includes one or more constraints for the means for selecting at least one set of subcreatives, the one or more constraints determining permitted combinations of subcreatives for the plurality of subsets of subcreatives.

74. (Previously Presented) The system according to claim 63, wherein the means for assembling a plurality of aggregate creative forms is operated off-line from when the aggregate creative is selected for transmission.

75. (Previously Presented) The system according to claim 63, further comprising means for tracking transmitted subcreatives transmitted to users on the electronic network.

76. (Previously Presented) The system according to claim 63, wherein at least one of the means for selecting at least one set of subcreatives, the means for selecting a plurality of subsets of subcreatives, and the means for assembling a plurality of aggregate creative forms operates in accordance with scheduling criteria for transmission to users.

77. (Previously Presented) The system according to claim 63, wherein at least one of the means for selecting at least one set of subcreatives, the means for selecting a plurality of subsets of subcreatives, and the means for assembling a plurality of aggregate creative forms operates in accordance with criteria for targeting transmission to specific users.

78. (Previously Presented) The system according to claim 63, wherein the aggregate creative definition enables an aggregate creative form to be assembled even if a prescribed number of subcreatives is not available in one of the subsets of subcreatives.

79. (Previously Presented) The system according to claim 63, wherein the advertising system is configured to select aggregate creatives and non-aggregate creatives for transmission to users on the electronic network.

80. (Previously Presented) A program product comprising a computer-readable storage device containing instructions recorded thereon, operable on a computer for the automated generation and serving of aggregate creatives, the instructions operable to be executed by the computer to perform the steps of:

- receiving an aggregate creative definition, the aggregate creative definition being associated with an aggregate creative that is selectable by an advertising system;

- selecting, in accordance with the aggregate creative definition, at least one set of more than one subcreative from a plurality of subcreatives in the advertising system;

- assembling, in accordance with the aggregate creative definition, a plurality of aggregate creative forms

- comprising the steps of:

rotating through the at least one set of more than one subcreative; and
selecting, during the step of rotating, a plurality of subsets of subcreatives to be included in the plurality of aggregate creative forms, the plurality of subsets of subcreatives including different combinations of more than one subcreative;
storing the plurality of aggregate creative forms, the plurality of aggregate creative forms associated with the aggregate creative in the advertising system as assembled forms; and
when the aggregate creative is selected for transmission to users on an electronic network by the advertising system, selecting one of the previously assembled plurality of stored aggregate creative forms associated with the aggregate creative, and retrieving the selected aggregate creative form for the transmission.

81. (Previously Presented) The program product according to claim 80, wherein the instructions further comprise the step of applying weighting criteria to the selected set of subcreatives, and the plurality of subsets of subcreatives are selected according to the weighting criteria.

82. (Previously Presented) The program product according to claim 81, wherein the step of applying weighting criteria comprises the step of generating copies of weighted subcreatives in the at least one set of subcreatives in accordance with the weighting criteria.

83. (Previously Presented) The program product according to claim 80, wherein the aggregate creative appears to rotate subcreatives when the step of selecting one of the aggregate creative forms and the step of retrieving the selected aggregate creative form are repeated.

84. (Previously Presented) The program product according to claim 80, wherein the at least one set of subcreatives includes a plurality of sets of subcreatives and the plurality of subsets of subcreatives are selected from each set of subcreatives.

85. (Previously Presented) The program product according to claim 84, wherein the aggregate creative forms include subsets of subcreatives from more than one of the plurality of sets of subcreatives.

86. (Previously Presented) The program product according to claim 84, wherein the aggregate creative appears to rotate subcreatives from more than one of the plurality of sets of subcreatives when the step of selecting one of the aggregate creative forms and the step of retrieving the selected aggregate creative form are repeated.
87. (Previously Presented) The program product according to claim 84, wherein the plurality of sets of subcreatives includes graphic subcreatives, text subcreatives, and hyperlink subcreatives.
88. (Previously Presented) The program product according to claim 84, wherein the plurality of sets of subcreatives include different numbers of subcreatives.
89. (Previously Presented) The program product according to claim 84, wherein at least two of the sets of subcreatives share one or more common subcreatives.
90. (Previously Presented) The program product according to claim 80, wherein the aggregate creative definition includes one or more constraints for the step of selecting at least one set of subcreatives, the one or more constraints determining permitted combinations of subcreatives for the plurality of subsets of subcreatives.
91. (Previously Presented) The program product according to claim 80, wherein the step of assembling a plurality of aggregate creative forms occurs off-line from when the aggregate creative is selected for transmission.
92. (Previously Presented) The program product according to claim 80, further comprising the step of tracking transmitted subcreatives transmitted to users on the electronic network.
93. (Previously Presented) The program product according to claim 80, wherein at least one of the steps of selecting at least one set of subcreatives, selecting a plurality of subsets of subcreatives, and assembling a plurality of aggregate creative forms is further executed according to scheduling criteria for transmission to users.

94. (Previously Presented) The program product according to claim 80, wherein at least one of the steps of selecting at least one set of subcreatives, selecting a plurality of subsets of subcreatives, and assembling a plurality of aggregate creative forms is further executed according to criteria for targeting transmission to specific users.

95. (Previously Presented) The program product according to claim 80, wherein the aggregate creative definition enables the step of assembling a plurality of aggregate creative forms to occur even if a prescribed number of subcreatives is not available in one of the subsets of subcreatives.

96. (Previously Presented) The program product according to claim 80, wherein the advertising system is configured to select aggregate creatives and non-aggregate creatives for transmission to users on the electronic network.